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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re HEAVEN T., a Person Coming Under
the Juvenile Court Law.

B260741
(Los Angeles County
Super. Ct. No. CK95330)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

LORRAINE P.,

Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Debra
Losnick, Referee. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Dawyn R.
Harrison, Assistant County Counsel, Jessica S. Mitchell, Deputy County Counsel, for
Respondent.

INTRODUCTION

L.P. (mother) appeals from the juvenile court's November 19, 2014 order denying her petition to reinstate reunification services under Welfare and Institutions Code section 388¹ and April 27, 2015 order terminating parental rights under section 366.26. She contends the denial of her petition without a hearing was an abuse of discretion and the ruling that the finding the exception to termination in section 366.26, subdivision (c)(1)(B)(i) does not apply is not supported by substantial evidence and was an abuse of discretion. We affirm.

PROCEDURAL STATEMENT

On August 30, 2012, H.T. (the child), then eight years old, and her 17 year-old half-sister were detained from mother's custody in the home of maternal grandmother. A section 300 petition was filed.

On March 5, 2013, the child was declared a dependent of the court, based on sustained allegations under section 300, subdivision (a) that there was a substantial risk she would suffer serious physical harm inflicted nonaccidentally upon her by mother, in that mother inappropriately physically disciplined the child, such inappropriate physical discipline was excessive and caused the child unreasonable pain and suffering, and the child no longer wanted to reside in the home due to the inappropriate discipline. Custody was taken from the parents,² and the court ordered the Department of Children and Family Services (Department) to provide reunification services. The court ordered mother to participate in a developmentally appropriate parenting counseling program and individual counseling to address anger management, physical abuse of children, and case

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² The juvenile court found that Ha.T. is the child's presumed father.

issues. The court granted mother monitored visits.

On June 23, 2014, the court terminated family reunification services and ordered the Department to provide permanent placement services. The court found return of the child to mother's physical custody would create a substantial risk of detriment to the physical and emotional well-being of the child. The court found there was no substantial probability the child would be returned to mother within six months. The matter was continued to October 20, 2014 for a selection and implementation hearing, under section 366.26 (setting order). On October 20, 2014, the section 366.26 hearing was trailed to December 8, 2014.

On November 6, 2014, mother filed a request under section 388 to vacate the setting order and grant mother reunification services, unmonitored visitation, and overnight visitation. On November 19, 2014, the court denied the request without ordering a hearing. The court found the proposed change of order did not promote the child's best interest, the petition was filed in November 2012 and the selection and implementation hearing was set for December 8, 2014. Mother filed a notice of appeal.

The selection and implementation hearing was held on April 27, 2015. The court took into evidence all the Department's reports from October 20, 2014 through and including April 27, 2015, and their attachments. No witnesses were called to testify. Mother argued the evidence was not clear and convincing the child was adoptable. After finding the child was likely to be adopted and no legal impediment or exception to termination was shown, the court terminated parental rights. Mother appealed. We consolidated the appeal of the order terminating parental rights with the appeal of the order denying the section 388 petition.

DISCUSSION

1. Denial of the Section 388 Petition Without a Hearing Was Not an Abuse of Discretion

Mother contends denial of her section 388 petition without a hearing was an abuse of discretion. We disagree with the contention.

A. Relevant Law and Standard of Review

Section 388, subdivision (a)(1) provides in pertinent part that a parent “may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made [¶] . . . [¶] (d) If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held” The party requesting the change of order has the burden of proof. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

“The petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.”³ (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

The juvenile court may “deny a section 388 petition without an evidentiary

³ “‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.) If substantial evidence supports the determination, the order is not an abuse of discretion. (*In re Jasmon O.*, *supra*, 8 Cal.4th at pp. 415-416.) In reviewing a challenge to the sufficiency of the evidence to support the juvenile court’s findings and orders, we determine whether substantial evidence, contradicted or uncontradicted, supports them, reviewing the record in the light most favorable to the court’s determinations and drawing all reasonable inferences to support the findings and orders. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We do not reweigh the evidence: fact and credibility determinations are the province of the trial court. (*Ibid.*)

hearing if the parent does not make a prima facie showing that the relief sought would promote a child's best interests.” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) (Accord, *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250 [“If the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing”].) In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case. (*In re Justice P.*, *supra*, 123 Cal.App.4th at p. 189.) (Accord, *In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.) “In assessing the best interests of the child, ‘a primary consideration ... is the goal of assuring stability and continuity.’ (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)” (*In re Mickel O.*, *supra*, 197 Cal.App.4th at p. 616.)

Once reunification services are terminated, the focus shifts from reunification to the child's need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) “[O]ur Supreme Court made it very clear in [*In re*] *Jasmon O.*, *supra*, 8 Cal.4th at pp. 408, 414-422] that the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531.) Moreover, time is of the essence, especially to young children; when it comes to securing a stable, permanent home for children, prolonged uncertainty is not in their best interest. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 674 [““There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current “home,” under the care of his parents or foster parents, especially when such uncertainty is prolonged.’ [Citation.]”].) “Childhood does not wait for the parent to become adequate.” (*In re Marilyn H.*, *supra*, at p. 310.)

B. Relevant Factual Background

The child lived with maternal grandmother and her older half-sister from the time she was seven months old until late 2011, when mother took her out of the home. The mother physically and emotionally abused the child and locked her in the closet. In August 2012, when the half-sister was visiting, mother physically attacked the child and, in the child's presence, threatened to kill herself and the half-sister. The half-sister took the child to maternal grandmother's house for protection. The child remained in the maternal grandmother's home for the rest of the case.

The child engaged in weekly, trauma-focused therapy from September 2012 to November 2013 as well as in collateral sessions with maternal grandmother. When she started therapy, she was frequently fearful, anxious, irritable, and unhappy. She worried she would be taken away, hurt, and forced to return to mother's custody. She was hyper-vigilant, and had frequent crying spells. She had intruding thoughts and images of the physical abuse she had been subjected to. She had nightmares on a daily basis where she would sleep walk, scream, and become panicked. The child successfully completed her trauma treatment. Her trauma-related symptoms decreased. She had nightmares only twice a month and experienced intruding thoughts and images of the physical abuse less frequently. The child felt happy in the home of maternal grandmother. Her grades in school and self-esteem improved.

However, the child continued to be afraid of mother. She told the social worker, "don't make me go with her!" She verbalized she did not want to be alone with mother because she would not feel "safe" and only wanted to visit mother when maternal grandmother was present. She did not want to be in therapy with mother. The subject of possible reunification with mother triggered the child's trauma symptoms. When discussing her possible return home, she said, "I know she will be mean to me again."

C. The Petition and Supporting Evidence

The petition asked the court to vacate the setting order, reinstate reunification services, and grant mother overnight and unmonitored visits. Mother alleged that she completed her case plan, visited consistently, and conjoint therapy had not begun. She alleged that the requested order would be better for the child, because “[the child] deserves to have a positive relationship with her mother. It is in her best interest to allow conjoint therapy to occur and to reunite this family.” The supporting documents consisted of letters from mother’s individual therapist and proof of completion of a parenting program. The individual therapist reported mother had successfully completed 52 therapy sessions in August 2014 and had met her treatment goals to manage her emotions and prevent harm to children. The therapist stated mother and the child could benefit from conjoint therapy to strengthen their relationship.

D. Analysis

The court’s summary denial of the petition was not an abuse of discretion, because mother failed to make the necessary *prima facie* showing that the requested relief would promote the child’s interest.

At this point in the proceedings, on the eve of the selection and implementation hearing, the court’s foremost concern was the child’s interest in stability and permanency. The child’s status had been in limbo for two years. She was severely traumatized by the physical and emotional abuse mother inflicted on her, and she remained terrified of being alone with mother. The possibility of reunification triggered her trauma symptoms. In contrast, the child felt safe and happy in her placement. This is evidence that, not only was it unlikely a further period of reunification efforts would be successful, but the child would suffer harm from the efforts. In these circumstances, mother’s evidence that she had learned how to be a better parent did not indicate the child’s best interest would be

promoted by resuming reunification efforts. The court acted well within its discretion when it denied the petition without a hearing.

2. Mother Forfeited the Contention That the Juvenile Court Erred in Finding the Exception in Section 366.26, Subdivision (c)(1)(B)(i), Did Not Apply

Mother contends the dependency court abused its discretion in terminating parental rights, because sufficient evidence was before the court to establish that the exception to termination in section 366.26, subdivision (c)(1)(B)(i) applied. Under this exception to termination, if reunification services have been terminated and the child is adoptable, the dependency court must terminate parental rights unless it “finds a compelling reason for determining that termination would be detrimental to the child due to [the circumstance that the parent has] [¶] . . . (i) maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” “The parent has the burden of establishing an exception to termination of parental rights.” (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 291.)

“The trial court has no sua sponte duty to determine whether an exception to adoption applies if it is not raised by a party. . . . When . . . the law does not require the juvenile court to act in a certain way, appellants bear the responsibility to care for their own interests by asking the court to exercise its discretion in a manner that is favorable to them and presenting persuasive evidence in that regard to the court.” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1323.) (Accord, *In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1295.)

Mother did not raise the exception at the hearing. She presented no evidence to persuade the court not to terminate parental rights.⁴ Having failed to ask the court to find

⁴ The reports in evidence demonstrated termination of parental rights would not be detrimental to the child. (See § 366.26, subd. (c)(1)(B)(i).) The child had been in maternal grandmother’s care since birth, although she lived with mother on and off

the exception to termination applied, mother forfeited the contention.⁵ (*In re Rachel M.*, *supra*, 113 Cal.App.4th at p. 1295 [failure to raise an exception to adoption at the hearing below waives the right to raise the issue on appeal].) (Accord, *In re A.A.*, *supra*, 167 Cal.App.4th at pp. 1323-1324; *In re Daisy D.*, *supra*, 144 Cal.App.4th at pp. 291-292.)

“[A]n appellate court has discretion to review claims not raised in the trial court that raise important legal issues, but ‘the discretion must be exercised with special care,’ particularly in dependency matters where ‘considerations such as permanency and stability are of paramount importance.’ (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [13 Cal.Rptr.3d 786, 90 P.3d 746].)” (*In re Daisy D.*, *supra*, 144 Cal.App.4th at p. 292.) Mother’s contention raises no important legal issue. Moreover, a determination concerning the exception in section 366.26, subdivision (c)(1)(B)(i) raises factual questions that were not litigated below and are unsuitable for resolution on appeal. We decline to exercise our discretion to excuse mother’s forfeiture of the issue.

through the years. She had been in maternal grandmother’s care continuously since August 30, 2012. The maternal grandmother wanted to adopt the child and had an approved home study. The maternal grandmother always encouraged and facilitated visitation with mother and planned to continue to promote the mother-child relationship. Mother’s visits were monitored by maternal grandmother. The child enjoyed the monitored visits. However, the child continued to be afraid of mother, did not want to live with her, and did not want unmonitored contact. The child wanted to be adopted by maternal grandmother and live with her forever.

⁵ We gave the parties an opportunity to submit supplemental briefs concerning whether mother forfeited her contention by failure to raise it below. In a letter brief, the department contends mother forfeited the contention by failing to raise the exception to termination at the section 366.26 hearing. Mother contends her appellate contention raises a pure question of law on undisputed facts. Mother further contends the appellate issue raises an important question of law.

DISPOSITION

The orders are affirmed.

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KIRSCHNER, J.*

We concur:

TURNER, P.J.

MOSK, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.